

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:	<u>STIPULATION AND ORDER</u>
COMMISSION,	:	
	:	10 Civ. 4270 (SHS)
Plaintiff,	:	
- v. -	:	
KENNETH IRA STARR, STARR	:	
INVESTMENT ADVISORS, LLC, and	:	
STARR & COMPANY, LLC,	:	
	:	
Defendants,	:	
DIANE PASSAGE and COLCAVE, LLC,	:	
	:	
Relief Defendants.	:	
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WHEREAS, on or about May 27, 2010, a Complaint, 10 Civ. 4270 (SHS) (the "Complaint"), was filed by the Securities and Exchange Commission (the "Commission") alleging that defendants Kenneth Ira Starr ("Starr"), Starr Investment Advisors, LLC ("SIA"), and Starr & Company, LLC ("Starrco" and, together with Starr and SIA, the "Defendants") violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-6(1), (2) (First Claim for Relief); and that SIA violated Section 206(4) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-6(4), and Rule 206(4)-2(a)(1) of the Investment Advisers Act Rules, 75 C.F.R. § 275.206(4)-2(a)(1) (Second Claim for Relief);

WHEREAS, the Complaint alleged, inter alia, that between April 13 and April 16, 2010, Defendants transferred approximately \$7 million from the accounts of three SIA and

Starrco clients, which was used to purchase a luxury Manhattan apartment for Starr, without the authorization of the clients;

WHEREAS, the Complaint sought, inter alia, an order appointing a receiver for SIA, Starrco, and Colcave;

WHEREAS, the Complaint sought, inter alia, an order restraining the Defendants and relief defendants Diane Passage ("Passage") and Colcave, LLC ("Colcave" and, together with Passage, the "Relief Defendants") from transferring, pledging, encumbering, assigning, dissipating, concealing or otherwise disposing of any assets, funds, or other property of, held by, or under the control of Defendants and/or Relief Defendants;

WHEREAS, on or about May 27, 2010, an Order to Show Cause, Temporary Restraining Order and Order Freezing Assets and Granting Other Relief (the "Restraining Order") was filed ordering, inter alia, that the Defendants and Relief Defendants and each of their financial and brokerage institutions, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such order by personal service, facsimile service, or otherwise, to hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the

control of Defendants and/or Relief Defendants, whether held in their names or for their direct or indirect beneficial interest wherever situated;

WHEREAS, on or about June 1, 2010, an Order was entered appointing Aurora Cassirer, Esq., of Troutman Sanders LLP (the "Receiver") as interim monitor of SIA, Starrco, and Colcave;

WHEREAS, on or about June 7, 2010, an Order was entered appointing the Receiver as temporary receiver for SIA, Starrco, and Colcave;

WHEREAS, on or about July 8, 2010, an Order was entered, inter alia, appointing the Receiver as receiver for SIA, Starrco, and Colcave;

WHEREAS, on or about June 10, 2010, an Indictment, 10 Cr. 520 (SAS) (the "Indictment") was returned by a grand jury sitting in the Southern District of New York, charging the defendant Kenneth Starr with twenty counts of wire fraud (Counts One through Twenty) in violation of Title 18, United States Code, Section 1343; one count of money laundering in violation of Title 18, United States Code, Section 1956(a)(1) (Count Twenty-One); one count of fraud by an investment advisor in violation of Title 15, United States Code, Sections 80b-6 and 80b-17 (Count Twenty-Two); and one count of securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) (Count Twenty-Three);

WHEREAS, the Indictment contained a forfeiture allegation providing notice that, as a result of the offenses charged in the Indictment, the defendant shall forfeit to the United States any and all property constituting or derived from any proceeds obtained directly or indirectly as a result of the alleged wire, money laundering and security fraud offenses;

WHEREAS, on or about September 10, 2010, Starr pled guilty before the Honorable Shira A. Scheindlin to Counts Nine, Twenty-One and Twenty-Two of the Indictment pursuant to a plea agreement with the United States Attorney's Office for the Southern District of New York (the "U.S. Attorney's Office");

WHEREAS, under the terms of the plea agreement, Starr admitted the forfeiture allegation in the Indictment and agreed to forfeit to the United States all of Starr's right, title, and interest in the following property:

Any and all right, title, and interest in the real property and appurtenances known as 433 East 74th Street, Unit 1C, New York, New York, 10021, together with all improvements and attachments thereto;

(the "Condominium");

WHEREAS, the U.S. Attorney's Office filed a notice of pendency with respect to the Condominium to preserve its interest therein;

WHEREAS, the legal description of the Condominium is: 433 East 74th Street, Unit 1C, New York, New York, recorded in New York County, New York records as Lot 1102 and Block 1469;

WHEREAS, the Condominium is held solely in the name of Colcave;

WHEREAS, Starr is the sole member of Colcave;

WHEREAS, on or about February 23, 2011, Judge Scheindlin entered a Consent Preliminary Order of Forfeiture forfeiting all of Starr's right, title and interest in, among other things, the Condominium, to the United States for disposition in accordance with the law;

WHEREAS, on or about April 5, 2011, Judge Scheindlin entered a Consent Preliminary Order of Forfeiture, inter alia, ordering a forfeiture money judgment against Starr in the amount of \$29,112,782.69 and forfeiting all of Starr's right, title and interest in, all funds on deposit at Signature Bank, N.A., in a account number 1501395923 (the "Colcave Account") held in the name of Colcave (the "Colcave Seized Funds");

WHEREAS, the Lux Condominium Board of Managers (the "Board") is the board of managers for the condominium association for the Condominium;

WHEREAS, since at least on or about May 26, 2010, Diane Passage and her minor child have continued to live in the Condominium;

WHEREAS, since at least on or about May 26, 2010, no common charge payments have been made to the Board relating to the Condominium;

WHEREAS, on or about March 15, 2011, upon the application of the Board, the Court issued an order to show cause why the Receiver should not be ordered to pay fees due to the Board relating to the Condominium;

WHEREAS, as of May 1, 2011, Colcave is approximately \$84,461.76 in arrears to the Board for common charges relating to the Condominium, which sum does not include various late charges, interest, or other fees or penalties that the Board contends are owed;

WHEREAS, the U.S. Attorney's Office wishes to release \$84,461.76 in United States currency (the "Funds") from the Colcave Seized Funds to the Board to pay the unpaid common charges relating to the Condominium as of May 1, 2011, not including any interest, fees, or penalties;

WHEREAS, on May 12, 2011, Judge Scheindlin entered a Stipulation And Order providing for the release of \$84,461.76 from the Colcave Seized Funds to the Board to pay the value of unpaid common charges relating to the Condominium as of May 1, 2011;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED, by and between the United States, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, Michael D. Lockard, Assistant United States Attorney, of counsel; the Commission, by its attorney Todd Daniel Brody, Esq.; Colcave, LLC, by Aurora Cassirer, Esq., receiver for Colcave; and

the Lux Condominium Board of Managers, by and through its attorney Roger Marion, Esq., Todtman, Machamie, Spizz & Johns, P.C., that:

1. The Restraining Order is hereby lifted to the extent required to permit the transfer of \$84,461.76 from the Colcave Seized Funds to the Lux Condominium Board of Managers, which sum shall be applied to the common charges currently owed relating to the Condominium.


2. The parties hereby waive all rights to appeal or to otherwise challenge or contest the validity of this Stipulation and Order.

3. Each party shall bear its own costs and attorneys' fees; provided, however, that this Stipulation and Order shall not preclude the Receiver from applying to the Court for her reasonable fees and expenses, including counsel fees, incurred in connection herewith.

4. The signature pages of this Stipulation and Order may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Signature pages may be by fax and such signatures shall be deemed as valid originals.

AGREED AND CONSENTED TO:

PREET BHARARA
United States Attorney for the
Southern District of New York

By: 
Michael D. Lockard
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
(212) 637-2193

May 13, 2011
DATE

[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]
SECURITIES AND EXCHANGE COMMISSION

By: _____
Todd Daniel Brody
Securities & Exchange Commission (3 WFC)
3 World Financial Center, Room 4300
New York, NY 10281
(212)-336-0080

DATE

COLCAVE, LLC

By: _____
Aurora Cassirer, Esq.
Troutman & Sanders LLP
405 Lexington Avenue
New York, NY 10174-0700
(212) 704-6249
Receiver for Colcave, LLC

DATE

[ADDITIONAL SIGNATURE ON FOLLOWING PAGE]

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AGREED AND CONSENTED TO:

DEEPT BHARARA
United States Attorney for the
Southern District of New York

By: _____
Michael D. Lockard
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
(212) 637-2194

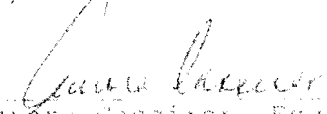
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[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]
SECURITIES AND EXCHANGE COMMISSION

By: _____
Todd Daniel Brady
Securities & Exchange Commission (S.W.F.C.)
3 World Financial Center, Room 4300
New York, NY 10281
(212) 336-6080

DATE

COLCAVE, LLC

By:  _____
Amanda Cassirer, Esq.
Tributman & Sanders LLP
405 Lexington Avenue
New York, NY 10174-6700
(212) 704-6243
Receiver for Colcave, LLC


DATE

[ADDITIONAL SIGNATURE ON FOLLOWING PAGE]

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PREET BHARARA
United States Attorney for the
Southern District of New York

By: _____
Michael D. Lockard
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
(212) 637-2193

DATE

[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]
SECURITIES AND EXCHANGE COMMISSION

By:  _____
Todd Daniel Brody
Securities & Exchange Commission (3 WFC)
3 World Financial Center, Room 4300
New York, NY 10281
(212)-336-0080

5/12/11

DATE

COLCAVE, LLC

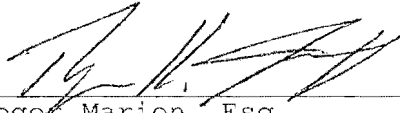
By: _____
Aurora Cassirer, Esq.
Troutman & Sanders LLP
405 Lexington Avenue
New York, NY 10174-0700
(212) 704-6249
Receiver for Colcave, LLC

DATE

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LUX CONDOMINIUM BOARD OF MANAGERS

By:

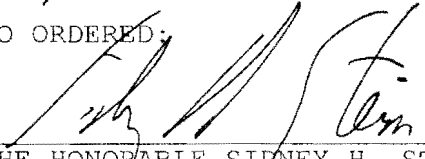

Roger Marion, Esq.
Todtman, Nachamie, Spizz & Johns, P.C.
425 Park Avenue, Fifth Floor
New York, New York 10022
(212) 754-9400
Attorneys for Lux Condominium Board of Managers

5-18-11

DATE

May 17, 2011

SO ORDERED:


THE HONORABLE SIDNEY H. STEIN
UNITED STATES DISTRICT JUDGE